

### **Remarks**

Claims 1-5, 7-11, 13-19, 22-25, 27-34, 36-44, 47-50, 71, 73 and 75-79 are pending and presented for examination. Claims 59-70 are withdrawn from consideration.

No new matter is added by the present Amendment. Applicant specifically reserves the right to pursue the subject matter of the canceled or amended claims in a related application. Each of the rejections levied in the Office Action is addressed individually below.

#### **Claim Rejections – 35 U.S.C. § 103**

Claims 1-5, 7-11, 13-19, 22-25, 27-34, 36-44, 48, 49, 71 and 75-79 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sherwood et al., Biomaterials, 23:4739-4751, 2002 (“Sherwood”), in view of Buttery *et al.*, Tissue Eng. 7(1): 89-99, 2001 (“Buttery”), and Athanasiou *et al.*, *Arthroscopy*, 14(7): 726-737, 1998 (“Athanasious 1”).

Claims 1 and 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sherwood, in view of Buttery, Athanasiou 1, and further in view of Athanasious *et al.*, 39<sup>th</sup> Annual Meeting, Orthopaedic Research Society, February 15-18, 1993, p288 (“Athanasious 2”).

Claims 1, 22, 39 and 48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sherwood, in view of Buttery, Athanasiou 1, and further in view of Bradham *et al.*, *Matrix Biol.* 14(7): 561-71, 1995 (“Bradham”).

Claims 1, 23, and 47 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sherwood, in view of Buttery, Athanasiou 1, Bradham and further in view of Kaushall *et al.*, *Nat. Med.*, 7: 1035-1040, 2001 (“Kaushall”).

Claims 1, 23, 71, 43, 50, 73 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sherwood, in view of Buttery, Athanasiou 1, and further in view of US 2002/0146678 (“Benvenisty”) and Kojima *et al.*, *Experimental Cell Research*, 206: 152-156, 1993 (“Kojima”).

Applicant respectfully traverses all these rejections.

The present application, U.S.S.N. 10/731,672, filed December 9, 2003, claims priority to U.S. Provisional Patent Application Serial No. 60/432,228, filed on December 10, 2002 (the ‘228 application), and U.S. Provisional Patent Application Serial No. 60/443,926, filed on January 31, 2003 (the ‘926 application). Applicant submits that Sherwood was available online on September 10, 2002, less than one year prior to the filings of the provisional applications, to which the present application claims priority.

Applicant therefore re-submits herewith a Declaration under 37 C.F.R. § 1.131, signed by inventor Shulamit Levenberg, Ph.D., for the purpose of removing Sherwood from consideration by the Examiner. The Declaration and its supporting exhibit was submitted on July 7, 2010, in response to the last office action, and has successfully removed the cited Griffith as acknowledged by the Examiner. As the Griffith reference had an effective date (February 8, 2002) that is prior to the effective date (September 10, 2002) of the Sherwood, the previous submission of the Declaration in fact should have removed both references for consideration. Regardless, Applicant hereby reiterates that the Declaration and the exhibit set out that the conception and reduction to practice of the claimed invention had been made prior to February 8, 2002, and respectfully submits that they clearly also predate the effective date (September 10, 2002) of the cited Sherwood. Therefore, Sherwood should be removed from consideration by the Examiner.

To the extent that all the obviousness rejections based on the combination of Sherwood with Buttery and Athanasious 1, even further in view of additional references, may be applicable to the presently pending claims, Applicant respectfully submits that they should be obviated upon submission of this Declaration under 37 C.F.R. § 1.131.

### Conclusion

Applicant would like to thank the Examiner for her time and consideration of this case. If a further telephone conversation would help clarify any issues, or help expedite allowance of this case, Applicant invites the Examiner to contact the undersigned at (617) 248-5175.

It is believed that all fees due with this response are being submitted herewith. To the extent that there are any discrepancies between what Applicant has paid with this submission and what the USPTO believes is owed, please apply any charges or credits to deposit account 03-1721, referencing Attorney Docket No. 0492611-0530 (MIT 10077). Applicant respectfully requests that a Notice be issued explaining any such discrepancy.

Respectfully submitted,

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